

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

VICKY JONES,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.: 03: 05-cv-0420-F
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

NOTICE OF SUGGESTION OF LACK OF SUBJECT MATTER JURISDICTION

Comes now Defendant, the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and provides this Court with Notice of Suggestion of Lack of Subject Matter Jurisdiction,¹ and as grounds states as follows:

1. This Court lacks jurisdiction over Plaintiff's state law claims brought pursuant to the Federal Tort Claims Act (FTCA), because Plaintiff failed to present her claim in accordance with 28 U.S.C. § 2401(b) which requires claims to be filed within two years from the date the cause of action accrued.

2. In support of this suggestion, Defendant offers the attached exhibits

¹ "When faced with factual disputes regarding subject matter jurisdiction, the district court serves as the fact-finder and may weigh the evidence, provided that the challenge to subject matter jurisdiction does not implicate an element of the cause of action. Fed.R.Civ.P. 12(b)(1) (1998). Because subject matter jurisdiction addresses the power of a court to hear a case, a jury does not resolve factual issues regarding subject matter jurisdiction. Instead, that duty is for the court." Scarfo v. Ginsberg, 175 F.3d 957,961 (11th Cir. 1999).

numbered 2 - 5 and an evidentiary submission and memorandum brief which is being filed contemporaneously herewith.

Respectfully submitted this 15th day of September, 2005.

LEURA G. CANARY
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/EDF system which will send notification of such filing to plaintiff's attorney, Richard F. Horsley, Esq.

s/R. Randolph Neeley
Assistant United States Attorney